

REMARKS

Claims 1-26 are currently pending in the application. Claims 1, 11 and 14 are currently amended. Claims 2, 6 and 10, 12-13 and 15-26 are previously presented. Claims 3-5 and 7-9 are original. No new matter is added. Claims 1-3 and 7-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles (U.S. Patent No. 3,049,729) in view of Poole (UK Patent Application No. 2 172 198 A). Claims 1-3, 8-14, and 17-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Propst (U.S. Patent No. 2,827,952) in view of Poole (UK Patent Application No. 2 172 198 A). Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles (U.S. Patent No. 3,049,729) in view of Poole (UK Patent Application No. 2 172 198 A) and further in view of Saputo (U.S. Patent No. 4,734,946). Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles (U.S. Patent No. 3,049,729) in view of Poole (UK Patent Application No. 2 172 198 A) in view of Saputo et al. (U.S. Patent No. 4,734,946) and further in view of Bellows et al. (U.S. Patent No. 6,557,191). Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles (U.S. Patent No. 3,049,729) in view of Poole (UK Patent Application No. 2 172 198 A) in view of Saputo (U.S. Patent No. 4,734,946) in view of Bellows et al. (U.S. Patent No. 6,557,191) and further in view of Wallace et al. (U.S. Patent No. 2,687,537).

Poole Discloses Decorative Panels for a Mattress Frame, Not for a Mattress Foundation

The Examiner asserts that base claims 1, 11 and 14 are unpatentable under 35 U.S.C. §103(a) based on Broyles in view of Poole and Propst in view of Poole. Applicant respectfully disagrees.

The Examiner has apparently confused the mattress "bed frame 50" disclosed by Poole with the "foundation C" disclosed in Fig. 1 of Broyles and the "foundation 100" disclosed in Fig. 1 of the application. Poole explicitly defines the bed frame 50 at page 2, col. 1, lines 19-23 as:

A bed frame 50 ... serves to confine the mattress 70 to a regular shape within the bed frame 50.

Poole distinguishes the "bed frame 50" from a separate mattress foundation by stating at page 2, col. 1, lines 24-26:

It is common to support the base [62] on a pedestal 64 which raises the mattress [70] off the ground.

Further, Poole clearly shows, in Fig. 3, a mattress foundation including pedestals 64 and the base 62 which provide upward support not only for the "water filled mattress 70," but also for the "frame 50" (See Poole, Fig. 3).

The "base 62" (Fig. 3) of Poole clearly corresponds to the "top surface 110" (Fig. 1) of the present application. Thus, each "pedestal 64" (Fig. 3) of Poole must correspond to an "essentially rigid sidewall ... depending downward from the top surface" as claimed in base claims 1, 11, and 14, and shown in Fig. 1 of the application. This leads to the logical observation that the "frame 50" cannot correspond to any part of the "mattress foundation" as claimed in base claims 1, 11, and 14 because the pedestals 64 (Fig. 3) of Poole serve the sidewall function and purpose. As a next logical observation, Poole does not teach or suggest applying "decorative panels" to either "pedestal 64." Therefore, Poole does not teach or suggest applying "decorative panels" to a "mattress foundation" as claimed in claims 1, 10, and 11. In contrast, Poole only discloses applying "decorative panels" to a frame of the mattress 70 to make the mattress 70 more aesthetically pleasing because the mattress 70 "is encased in a safety liner 60" that has no upholstered features or textures (see Poole, page 2, col. 1, line 19 and Fig. 3).

Even assuming that Broyles could be combined with Poole, which the Applicant disputes, the resulting apparatus, at best, would be a mattress foundation supporting a mattress having "decorative panels" which is not the claimed invention as recited in base claims 1, 11, and 14.

The Examiner has admitted that Broyles does not teach or suggest "a mattress foundation (C) having at least one sidewall outer surface (2-5) with a pattern unitarily formed thereon which is substantially planar or three-dimensional" (See Office Action, Section 2). Because Poole only discloses "decorative panels" and "relief motifs" for a mattress or mattress frame, as opposed to a mattress foundation, Poole cannot not teach or suggest "a mattress foundation.... wherein an outer surface of the sidewall includes a pattern unitarily formed with the sidewall " as recited in base claim 1.

With regard to the rejection based on Propst, Applicant point out that Propst is merely directed to a cushion construction and does not teach or suggest numerous elements explicitly stated in base claims 1, 11 and 14. In particular, Propst does not teach or suggest a mattress foundation having a essentially rigid planar top surface, a substantially rigid sidewall and a frame assembly. The cushion construction in Propst is disclosed to "replace cushion bodies such as...mattresses...[and] composed of a plurality of interconnected sections, each section comprising a somewhat rigid material..." (See Col. 1, Lines 15-18 and Lines 53-55). Therefore the cushion construction in Propst is not the mattress foundation of the claims having an essentially rigid top surface and substantially rigid sidewalls. The Office Action states that "Propst lacks the use of a mattress foundation having at least one sidewall outer surface with a pattern unitarily formed thereon." However, it is evident that nowhere in Propst is there any teaching or suggestion for a mattress foundation having each of the elements as recited in claim 1. Thus Propst, alone or in combination with Poole, does not teach or suggest each and every limitation of the claimed invention.

For the above reasons, any combination of one or more of Broyles, Propst and Poole fail to teach or suggest all of the elements of base claims 1, 11, and 14. Therefore, the Examiner has failed to make a prima facie case of obviousness for base claims 1, 11, and 14 with regard to Broyles and Poole and with regard to Propst and Poole. Accordingly, the §103 Rejection of amended base claims 1, 11, and 14 should be withdrawn.

Because claims 2-10, 12-13 and 15-26 depend from, and are limited by, base claims 1, 11 and 14, the §103 Rejection of these claims should be withdrawn.

In view of the above discussion, it is also apparent that there would be no motivation to combine Broyles with Poole or Propst with Poole because none were concerned with making the "mattress foundation" more aesthetically pleasing. Broyles is not concerned with decorating the "foundation C." Propst is concerned with a cushion construction and has nothing to do with a mattress foundation. Poole is only concerned with making the "mattress 70" more aesthetically pleasing by attaching decorative panels to the frame 50 surrounding the mattress 70.

Therefore, there is no prima facie case of obviousness for base claims 1, 11, and 14 due to lack of motivation to combine Broyles and Poole, and Propst and Poole. Accordingly, the §103 Rejection of amended base claims 1, 11, and 14 should be withdrawn.

Because claims 2-10, 12-13 and 15-26 depend from, and are limited by, base claims 1, 11 and 14, the §103 Rejection of these claims should be withdrawn.

As noted earlier, Propst does not teach or suggest various feature recited in the claims including a mattress foundation, a sidewall having a pattern and ground support members. In addition to the foregoing deficiencies, Propst is unambiguously directed to a cushion construction and not a plastic mattress assembly and should be precluded from being used in an obviousness rejection. One of ordinary skill in the art of mattress assemblies would not think to look at Propst and then, based merely on the visual appearance of Figure 1, deem the claimed invention an obvious variant. The Examiner is urged to reconsider the rejection since there is no motivation to combine Propst with Poole or Broyles.

Poole and Propst disclose Non-Analogous Art

Applicant respectfully disagrees with the §103 Rejection of base claims 1, 11, and 14 for the following additional reason.

Poole clearly discloses "decorative panels" for a mattress frame of a mattress, as opposed to a "mattress foundation" as recited in base claims 1, 11, and 14. The "frame 50" is a mattress frame that provides structure to the "mattress 70." The USPTO has assigned different classifications for waterbeds and mattresses than for "mattress foundations." Further, the "frame 50" clearly has "differences in structure and function" than the "mattress foundation" as recited in base claims 1, 11, and 14 (See *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973)). For example, the "frame 50" functions to provide lateral support "to confine the mattress 70 to a regular shape" (See Poole, page 2, col. 1, lines 22-23). In contrast, the "mattress foundation" of the claimed invention includes "a generally planar and essentially rigid top surface having an upper side for supporting a companion mattress," as recited in claim 1. Poole, itself, shows a mattress foundation including base 62 and pedestals 64 that is separate and distinct from the "mattress 70" and its associated "frame 50."

As noted earlier, Propst is unambiguously directed to a cushion construction and not a mattress assembly or a mattress foundation as recited in base claims 1, 11 and 14. More particularly Propst relates to "an improved article of manufacture that may replace large cushion bodies." (See Propst, col. 1, lines 15-21). The USPTO has assigned different classifications for cushions than for "mattress foundations."

Thus, the Examiner cannot rely upon Poole for the above §103 Rejection because Poole discloses non-analogous art related to providing "decorative panels" for a mattress or mattress frame, not for a mattress foundation. Similarly, the Examiner cannot rely upon Propst for the above §103 Rejection because Propst also discloses non-analogous art related to providing a cushion construction, not a mattress foundation. Accordingly, the §103 Rejection should be withdrawn for this additional reason.

Other Rejections

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. At least for the reasons discussed above, the Examiner has failed to make a prima facie case of obviousness for claim 4. Accordingly, the §103 Rejection of claim 4 should be withdrawn.

Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. At least for the reasons discussed above, the Examiner has failed to make a prima facie case of obviousness for claim 5. Accordingly, the §103 Rejection of claim 5 should be withdrawn.

Claim 6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Broyles in view of Poole and further in view of Saputo et al. and further in view of Bellows et al. and further in view of Wallace et al. At least for the reasons discussed above, the Examiner has failed to make a prima facie case of obviousness for claim 5. Accordingly, the §103 Rejection of claim 6 should be withdrawn.

In view of the above amendment, remarks and discussion, applicant believes the pending application is in condition for allowance.

Applicant believes no additional fee is due with this response. However, if an additional fee is due, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P02-085 from which the undersigned is authorized to draw.

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Respectfully submitted,

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